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(ii) allocation statistics appropriate to each cost center or unit of service; and

(iii) number of full-time equivalents (FTE's) per each cost center or unit of service.

Based on the groups established pursuant to the above, the commissioner shall develop staffing guidelines which shall be the average of staffing within a group for each cost center or unit of service. The guidelines developed through this process in conjunction with the programmatic review shall be used to evaluate the appealing facility's requested FTE complement per cost center or unit of service.

(2) Nonsalary reimbursable operating costs shall be limited to the facility's base year unit costs or, if these are not available, to group average unit costs, trended forward to the respective rate year by the trend factor established according to section [86-1.15] 86-1.58 of this Subpart, multiplied by the appropriate budgeted statistics.

(3) Energy costs shall be reimbursed in full if the facility can document that it has:

(i) performed an energy audit pursuant to the guidelines of the State Energy Office in the "Energy Audit Report, EA-1 10-80 (revised as of October 1980), General

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Instructions, Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions" and the accompanying Energy Audit Report, which are hereby incorporated by reference. Copies of the Energy Audit General Instructions and Report may be obtained from the New York State Energy Office, Empire State Plaza, Agency Building 2, 20th Floor, Albany, New York 12223. A copy is available for inspection and copying at the Records Access Office of the New York State Department of Health, Erastus Corning 2nd Tower, Empire State Plaza, Albany, New York 12237, and at the New York State Department of State, 162 Washington Avenue, Albany, New York 12231; and

(ii) adhered to Subchapter C, Chapter 2, Subtitle BB of Title 9 NYCRR (New York State Lighting Standards), as adopted by the New York State Energy Office on September 16, 1980, hereby incorporated by reference with respect to any new construction which is the subject of an appeal hereunder.

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(4) If compliance with the above energy standards has not been documented, then energy costs shall be limited to the base year costs trended forward to the respective year by the trend factor established pursuant to section [86-1.15] 86-1.58 of this Subpart, multiplied by the appropriate budgeted statistics.

(b) reserved

(c) reserved

(d) reserved

(e) reserved

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(5) reserved

(6) reserved

(7) reserved

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- (8) reserved
- (9) reserved
- (b) reserved

(c) An application by a medical facility for review of a certified rate is to be submitted on forms provided by the department and shall set forth the basis for the appeal and the issues of fact. Documentation shall accompany the application, where appropriate, and the department may request such additional documentation as determined necessary.

(1) The affirmation or revision of the rate upon such staff review shall be final, unless within 30 days of its receipt a hearing is requested, by registered or certified mail, before a rate review officer on forms supplied by the department. The request shall contain a statement of the factual issues to be re-

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solved. The facility may submit memoranda on legal issues which it deems relevant to the appeal.

(2) Where the rate review officer determines that there is no factual issue, the request for a hearing shall be denied and the facility notified of such determination. No administrative appeal shall be available from this determination. The rate review officer, where he determines that there is factual issue, shall issue a notice of hearing establishing the date, time and place of the hearing and setting for the factual issues as determined by such officer. The hearing shall be held in conformity with the provisions of section 12-a of the Public Health Law and the State Administrative Procedure Act.

(3) The recommendation of the rate review officer shall be submitted to the Commissioner of Health for final approval or disapproval and recertification of the rate where appropriate.

(4) The procedure set forth in this subdivision shall apply to all applications for rate reviews which are pending as of April 1, 1978. Rate appeals filed prior to April 1, 1978 will not be required to be resubmitted subsequent to April 1, 1978.

(d) Reserved

(e) In reviewing appeals for revisions to certified rates, the commissioner may refuse to accept or consider an appeal from a medical facility:

(1) providing an unacceptable level of care as determined after review

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(2) operated by the same management when it is determined by the department that this management is providing an unacceptable level of care as determined after review by the State Hospital Review and Planning Council in one of its facilities;

(3) where it has been determined by the commissioner that the operation is being conducted by a person or persons not properly established in accordance with the Public Health Law; or

(4) where a fine or penalty has been imposed on the facility and such fine or penalty has not been paid. In such instances subdivision (d) of this section shall not be effective until the date the appeal is accepted by the commissioner.

(f) Any medical facility eligible for title XVIII (Medicare) certification providing services to patients insured under title XIX which is not, or ceases to be, a title XVIII provider of care shall have its current reimbursement rate reduced by 10 percent. This rate reduction shall remain in effect until the first day of the month following certification of such a provider by the title XVIII program. Such rate reductions shall be in addition to any revision of rates based on audit exceptions.

(g) reserved

(h) reserved

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(i) reserved

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86-1.18 Rates for services. (a) The State Commissioner of Health shall, in certifying schedules for government payments to hospitals, separately identify all-inclusive prospective rates for inpatient services, emergency services, clinic services and such other services for which a separate rate is deemed appropriate by the commissioner.

(b) Payment for newborns shall be made at one third of the mother's rate.

(c) The State Commissioner of Health shall, in certifying schedules for government payments to hospitals, establish one all-inclusive prospective rate for inpatient hospital care to reflect the services provided by each facility possessing a valid operating certificate. In addition, the commissioner shall identify and certify all-inclusive prospective rates for emergency services, clinic services and for such other services as deemed appropriate.

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Section 86-1.19 Rates for medical facilities without adequate cost experience. (a) This subdivision shall apply where the fiscal and statistical data of the facility are unavailable through no fault of the provider or its agents, and due to circumstances beyond its control, or when there is a new facility without adequate cost experience, or when there is a new service for which there is a discrete rate and which is without adequate cost experience.

(b) The rates certified for such medical facilities or approved services as set forth in subdivision (a) of this section, shall be determined on the basis of generally applicable factors, including but not limited to the following:

(1) the usual and customary rates, for comparable services, in the geographic area;

(2) satisfactory cost projections;

(3) allowable actual expenditures; and

(4) an anticipated utilization of no less than the average for the geographic area or the minimums established in this Part, whichever is greater.

* * *

(d) All rates of reimbursement certified pursuant to this section shall be subject to audit pursuant to section 86-1.8 of this Subpart. After audit, the facility shall receive a rate based upon actual allowable costs incurred during the rate period, consistent with the provisions of this Subpart.

Approval Date JUL. 23 1987 Effective Date JAN. 1 1986

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